

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Port of Tacoma

AGREED ORDER

No. DE 5867

TO: Mr. Timothy J. Farrell, Executive Director
Port of Tacoma
P.O. Box 1837
Tacoma, WA 98401

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	4
VI.	ECOLOGY DETERMINATIONS.....	8
VII.	WORK TO BE PERFORMED.....	10
VIII.	TERMS AND CONDITIONS OF ORDER.....	11
	A. Public Notice.....	11
	B. Remedial Action Costs.....	11
	C. Implementation of Remedial Action.....	12
	D. Designated Project Coordinators.....	12
	E. Performance.....	13
	F. Access.....	14
	G. Sampling, Data Submittal, and Availability.....	14
	H. Public Participation.....	15
	I. Retention of Records.....	17
	J. Resolution of Disputes.....	17
	K. Extension of Schedule.....	17
	L. Amendment of Order.....	19
	M. Endangerment.....	20
	N. Reservation of Rights.....	21
	O. Transfer of Interest in Property.....	21
	P. Compliance with Applicable Laws.....	22
	Q. Indemnification.....	23
IX.	SATISFACTION OF ORDER.....	24
X.	ENFORCEMENT.....	24

EXHIBIT A.	Site Diagram
EXHIBIT B.	Scope of Work

EXHIBIT C.	Schedule
EXHIBIT D	Interim Action Work Plan
EXHIBIT E	Sampling And Analysis Plan
EXHIBIT F	Health And Safety Plan
EXHIBIT G	RI/FS Work Plan
EXHIBIT H	Permits And Substantive Requirements
EXHIBIT I	Public Participation Plan

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Tacoma under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Port of Tacoma to perform a remedial investigation and feasibility study (RI/FS) and an interim action at the Citifor Site (Site) in Maytown, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Port of Tacoma agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Port of Tacoma's responsibility under this Order. Port of Tacoma shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Citifor, Inc. Site and is comprised of 169 acres generally located at 13120 Tilley Road South, Maytown, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and Port of Tacoma.

C. Potentially Liable Person (PLP): Refers to Port of Tacoma, Citifor, Inc. ("Citifor"), Hercules Powder Company ("Hercules"), and Dyno Nobel, Inc. ("Dyno Nobel").

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Port of Tacoma:

A. Pacific Powder Company began acquiring and leasing property in Maytown, Washington, in the early to mid 1940s. It operated a dynamite manufacturing facility in Maytown until 1964, when it sold its facilities and property interests to Hercules Powder Company ("Hercules").

B. Hercules thereafter acquired additional surrounding property and, by 1966, the company owned 1,625 acres located at 13120 Tilley Road South, Maytown, Washington. Hercules manufactured dynamite in the north central part of the property from 1964 to 1968 and constructed an ANFO (a mixture of ammonium nitrate and fuel oil) production facility in an area later known as the MEAN (monoethanolamine nitrate, a slurry explosive) Plant. In 1968, Hercules stopped manufacturing explosives on the property and decommissioned its dynamite manufacturing facilities. Hercules continued

to ship its explosives from off-site manufacturing facilities to the property and continued to sell those explosives from on-site magazines, where they were stored.

C. In approximately 1970, former Hercules employee William Garson formed Pacific Powder Pipe & Supply, a company which later became known as PACCO. Pacific Powder Pipe & Supply, PACCO, and Mr. Garson may have also conducted business using the Pacific Powder Company name. Between approximately 1970 and 1985, operations conducted on the property included distributing Hercules's explosives, operating a Culvert Plant west of the Powder Plant, and manufacturing ANFO in the MEAN Plant area. When ANFO production was moved in the 1980s to Building 9 in the Powder Plant area, the MEAN Plant was used to manufacture MEAN.

D. In 1985, Ireco, Inc. ("Ireco," which is now Dyno Nobel, Inc. or "Dyno Nobel") purchased the property from Hercules and around 1989 acquired Pacific Powder Company. Ireco continued to operate an ammonium nitrate-based explosive manufacturing facility on the property until December 1993, at which time it sold the property to Citifor, Inc. ("Citifor"). Through a post-sale lease agreement with Citifor, Inc., Dyno Nobel sub-leased a portion of the property for one year to its distributor, Alaska Pacific Powder Company.

E. In April 1993, in anticipation of the sale of the property to Citifor, Dyno Nobel conducted an independent investigation and a cleanup of approximately 29 areas that the company identified as potentially contaminated. Dyno Nobel's cleanup activities continued into 1994 and involved the excavation and removal of petroleum-impacted soils from the ABS Landfill, MEAN Plant, 1970s-Era Fire Works Burn Pits Area, Culvert Plant, and other areas adjacent to several fuel oil USTs, oil/water separators, sumps, and waste oil tanks at the Powder Plant. Dyno Nobel burned the four potentially lead-lined magazines and transported the resulting ash off-site. It also removed PCB-containing equipment and, some asbestos-containing materials. Dyno Nobel documented the results of its cleanup activities in two reports issued in December 1994 and November 1995.

F. Citifor purchased the 1,625-acre property from Dyno Nobel in 1993. In August 2005, Citifor and Ecology entered into Agreed Order No. 02TCPSR-4523 (Citifor Order). The Citifor Order required Citifor to conduct an RI/FS and implement an interim action to remove DNT-impacted soil at the Drum Burial Area of this Site. The Port of Tacoma was not a signatory to the Citifor Order.

G. By letter dated January 27, 2006, Ecology redefined the Site to exclude approximately 1,456 acres of the property that was shown, based on investigations, not to have been adversely impacted by a release of hazardous substances. The Site now comprises the balance of 169 acres.

H. In areas of the Site where nitroglycerin (NG) was produced and handled in the Old Nitrator Area (Nitrator House, Spent Acid Batch House, Acid Pond, NG Gutter Alignment, and Neutralizer House), Citifor performed an explosives hazard assessment (EHA) between November 2005 and July 2006 to minimize safety hazards and locate any buried foundations, conduits, and other structures. The EHA resulted in 3,577 tons of stockpiled soil containing lead and asbestos being hauled offsite for proper disposal.

I. During the summer of 2006, Citifor performed interim remedial actions consistent with the requirements of the Citifor Order. In June and July 2006, Citifor began, but did not complete, an interim remedial action at the Drum Burial Area. The Port of Tacoma completed the action in December 2006 after the Port of Tacoma purchased the property from Citifor. The Drum Burial Area interim remedial action resulted in 6,429 tons of DNT-contaminated soil being hauled offsite for proper disposal.

J. On July 28, 2006, the Port of Tacoma purchased 745 acres including the 169 acre Site from Citifor.

K. Before selling the property to the Port of Tacoma, Citifor had completed the majority of the Citifor Order requirements, including completion of the majority of the Drum Burial Area interim action. Some requirements under the Citifor Order were not completed.

- L. Citifor dissolved as a corporation on November 30, 2006.
- M. The Port of Tacoma conducted a sympathetic detonation program during November 2006 at locations where NG was historically handled. This detonation program was a safety precaution to reduce the risk of nitroglycerin being present in soil undergoing sampling or excavation. There was no evidence of an explosion of NG during the detonations.
- N. The Port of Tacoma submitted for Ecology's review a draft Soil Cleanup Report for the Drum Burial Area interim remedial action on February 23, 2007. The Port of Tacoma addressed Ecology's comments and finalized the report on March 22, 2007.
- O. The Port of Tacoma submitted for Ecology's review a draft remedial investigation (RI) report on March 17, 2007. The Port of Tacoma addressed Ecology's comments on the draft RI report. The Port of Tacoma and Ecology agreed that additional focused interim remedial actions (soil removals) are appropriate prior to moving forward with the RI.
- P. Consistent with the seven scope of work elements for the RI/FS Work Plan and Drum Burial Area Interim Remedial Action Work Plan under the Citifor Order, the following activities have now been completed for the Site:
- Perform Interim Action for the Drum Burial Area
 - Perform Explosive Hazard Assessment (EHA)
 - Prepare RI/FS Work Plan
 - Perform Pre-sampling Vegetation and Explosives Clearing Activities
 - Conduct Soil Sampling Field Work
 - Conduct Groundwater Sampling and Elevation Monitoring Field Work
- Q. Additional remedial work is still necessary at the Site, including preparation of the RI report and the focused FS report, plus additional cleanup.
- R. The Citifor Order will terminate upon the effective date of this Order.

VI. ECOLOGY DETERMINATIONS

A. Port of Tacoma is an “owner or operator” as defined at RCW 70.105D.020(12) of a “facility” as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. The substances found at the Site as described above are “hazardous substances” as defined at RCW 70.105D.020(7).

D. Based on the presence of these hazardous substances at the Site and all factors known to Ecology, there is a release or threatened release of hazardous substances from the Site, as defined at RCW 70.105D.020(20).

E. Ecology issued a “potentially liable person” status letter dated November 4, 1998, to Citifor, pursuant to RCW 70.1050.040, RCW 70.105D.020(16) and WAC 173-340-500. By a letter dated November 19, 1998, Citifor responded to the “potentially liable person” status letter. After reviewing Citifor’s response, Ecology issued a determination that Citifor is a “potentially liable person” (PLP) under RCW 70.1050.040 and notified Citifor of this determination by letter dated July 11, 2002.

F. By a letter dated March 4, 2003, Ecology notified Hercules of its status as a “potentially liable person” under RCW 70.105D.040 after notice and opportunity for comment.

G. By a letter dated March 4, 2003, Ecology notified Dyno Nobel of its status as a “potentially liable person” under RCW 70.105D.040 after notice and opportunity for comment.

H. Based upon credible evidence, Ecology issued a PLP status letter to Port of Tacoma dated August 24, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of

potential liability, Ecology issued a determination that Port of Tacoma is a PLP under RCW 70.105D.040 and notified Port of Tacoma of this determination by letter dated September 25, 2006.

I. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

J. Under WAC 173-340-430(l), an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. The presence of soil and groundwater contamination in the Drum Burial Area warranted an interim action consistent with WAC 173-340-430(l). The excavation and proper disposal of stockpiled and in-situ contaminated soils and/or contaminated buildings/structures and/or contaminated debris will help reduce or eliminate the threat of potential or ongoing impacts to human health and the environment.

K. Although interim actions have been taken at the site, additional remedial action is necessary to complete the RI/FS for the Site and to implement a final remedy consistent with MTCA and its implementing regulations, Chapter 173-340 WAC.

L. Ecology has determined that entering into a separate Agreed Order with the Port of Tacoma for completion of outstanding work required by the Citifor Order will facilitate cleanup.

M. Based on the foregoing facts, Ecology believes the investigation and remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Port of Tacoma take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Scope of Work.

The work to be performed will be conducted as set forth in the Scope of Work included as Exhibit B. Exhibit B outlines a number of deliverables for Ecology's review and approval. Once approved by Ecology, the deliverables become an integral and enforceable part of this Order. The Scope of Work includes the following deliverables:

1. Revised Draft Remedial Investigation Report
2. Final Draft Remedial Investigation Report
3. Draft Feasibility Study Report
4. Final Draft Feasibility Study Report
5. Final Remedial Investigation and Feasibility Report
6. Draft Cleanup Action Plan

B. Schedule.

The Schedule for implementation of the Scope of Work by the Port of Tacoma is included as Exhibit C.

C. Completion of Deliverable by Ecology.

If at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any deliverable required by this Section and detailed in Exhibit B, Ecology may provide written notice to the Port of Tacoma that the Port of Tacoma has thirty (30) days to demonstrate sufficient progress in preparation of the required deliverable. If such notice is given and sufficient progress is not demonstrated within such thirty (30) day period, then at that time Ecology may complete and issue the deliverable. Ecology need provide this written notice and thirty

(30) day opportunity to cure only once per deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

Port of Tacoma shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed subsequent to the Port of Tacoma's purchase of the property, which included the 169 acre Site, on July 28, 2006. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Port of Tacoma shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that Port of Tacoma has failed without good cause to implement any remedial action required by this Order and detailed in Exhibit B, in whole or in part, Ecology may provide written notice to the Port of Tacoma that the Port of Tacoma has thirty (30) days to demonstrate sufficient progress in implementation of the required remedial action. If such notice is given and sufficient progress is not demonstrated within such thirty (30) day period, then at that time Ecology may perform any or all portions of the remedial action that remain incomplete. Ecology need provide this written notice and thirty (30) day opportunity to cure only once per remedial action. If Ecology performs all or portions of any remedial action because of Port of Tacoma's failure to comply with its obligations under this Order, Port of Tacoma shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that Port of Tacoma is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation Port of Tacoma shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Guy Barrett, LHg
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-7115
gbar461@ecy.wa.gov

The project coordinator for Port of Tacoma is:

Scott Hooton
P.O. Box 1837
Tacoma, WA 98401

(253) 383-9428
shooton@portoftacoma.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Port of Tacoma, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

Port of Tacoma shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Port of Tacoma either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Port of Tacoma's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Port of Tacoma. Port of Tacoma shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Port of Tacoma where remedial activities or investigations will be performed pursuant to this Order and if after making all reasonable efforts the Port of Tacoma is unable to secure access then Ecology shall make reasonable efforts to facilitate such access. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Port of Tacoma unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Port of Tacoma shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with

Section VII.A. (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Port of Tacoma shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Port of Tacoma pursuant to implementation of this Order. Port of Tacoma shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Where over excavation at the Site is necessary and seven (7) days advance notice is not feasible, the Port of Tacoma shall not proceed with the sample collection or work activity at the Site until Ecology has been given reasonable advance notification and approved of the activity. Ecology shall, upon request, allow Port of Tacoma and/or its authorized representative to take split or duplicate samples, at the cost of the Port of Tacoma, of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. (Access), Ecology shall give reasonable advance notice to Port of Tacoma of any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site (Exhibit I). Ecology shall develop a Public Participation Plan alone or in conjunction with the Port of Tacoma. Ecology shall maintain the responsibility for public participation at the Site. However, Port of Tacoma shall cooperate with Ecology, and shall:

1. If requested by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the

submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Port of Tacoma prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Port of Tacoma that do not receive prior Ecology approval, Port of Tacoma shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Timberland Regional Library
7023 New Market Street
Tumwater, WA
- b. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Port of Tacoma shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Port of Tacoma shall make all records available to Ecology and allow access for review within a reasonable time, except to the extent such records are protected from disclosure by attorney client privilege or any other applicable law for which Port of Tacoma will prepare a Privilege Log describing all withheld or redacted documents or information. No actual data collected on Site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B. (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, Port of Tacoma has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. Port of Tacoma may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of Port of Tacoma's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Port of Tacoma to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Port of Tacoma including delays caused by unrelated third parties or

Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Port of Tacoma

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.M. (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Port of Tacoma.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Port of Tacoma written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L. (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.M. (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N. (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Port of Tacoma. Port of Tacoma shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Port of Tacoma to cease such activities for such period of time as it deems necessary to abate the danger. Port of Tacoma shall immediately comply with such direction.

In the event Port of Tacoma determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Port of Tacoma may cease such activities. Port of Tacoma shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Port of Tacoma shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Port of Tacoma's cessation of activities, it may direct Port of Tacoma to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M. (Endangerment), Port of Tacoma's obligations with respect to the ceased activities shall

be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K. (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Port of Tacoma to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Port of Tacoma regarding remedial actions required by this Order, provided Port of Tacoma complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Port of Tacoma without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Port of Tacoma's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Port of Tacoma shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Port of Tacoma shall notify Ecology of said transfer. Upon transfer of any interest, Port of Tacoma shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Port of Tacoma pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit H.

2. Pursuant to RCW 70.105D.090(1), Port of Tacoma is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Port of Tacoma shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit H.

Port of Tacoma has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Port of Tacoma determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Port of

Tacoma shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Port of Tacoma shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Port of Tacoma and on how Port of Tacoma must meet those requirements. Ecology shall inform Port of Tacoma in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Port of Tacoma shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and Port of Tacoma shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

Port of Tacoma agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Port of Tacoma, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Port of Tacoma shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent

acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Port of Tacoma's receipt of written notification from Ecology that Port of Tacoma has completed the remedial activity required by this Order, as amended by any modifications, and that Port of Tacoma has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event Port of Tacoma refuses, without sufficient cause, to comply with any term of this Order, Port of Tacoma will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

///

///

///

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

PORT OF TACOMA



Mr. Timothy Farrell
Executive Director
Port of Tacoma
Telephone: (253) 383-9402

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

Rebecca S. Lawson, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: (360) 407-6241

